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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/577,294	05/23/00	BLECKMANN	A BEIERSDORF 6

HM22/0130
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EXAMINER

WELLS, L

ART UNIT	PAPER NUMBER
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1619

DATE MAILED: 01/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/577,294

Applicant(s)

BLECKMANN ET AL.

Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/577,294.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

DETAILED ACTION

Claims 1-6 have been presented for examination and will be reviewed on their merits.

Priority

1. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action.

Claim Objections

2. Claim 6 is objected to because of the following informalities: Vinylpyrrolidone is spelled incorrectly. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1, 2, 4, and 5, the phrases "in particular", "preferably", and "optionally, but particularly" renders the claims indefinite because it is unclear whether the limitations following the phrases are part of the claimed invention. See MPEP § 2173.05(d). Regarding claim 6, the phrases "such as" and "for example" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Furthermore, regarding claim 6, the brackets in the last three lines of the claim are rendered indefinite, as brackets in claims are used to depict deleted material. Claims 1,

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3, and 4 are rejected for use of improper Markush groups. See MPEP 2173.05(h) for examples of proper conventional or alternative Markush-type language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mellul et al. (6,083,491) in view of Sine et al. (5,997,890).

Mellul et al. teach a water-in-oil emulsion comprising cetyl dimethicone copolyol, water, and caprylic and capric acid triglycerides. Cationic polymers disclosed include quaternized collagen polypeptides, quaternized wheat polypeptides, cationic cellulose derivatives, cationic guar gum, copolymers of adipic acid with dimethylaminohydroxypropyldiethylenetriamine, copolymers of acrylic acid with dimethyldiallylammonium chloride, quaternized vinylpyrrolidone/vinylimidazole polymers, polyalkyleneimines, and cationic silicone polymers.

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Oil phase constituents disclosed include octyldodecanol, octyl stearate, and octyl palmitate.

Cationic polymers are disclosed as comprising 0.1-10% of the composition. Mellul et al. fail to teach percent weights of the oil phase and water phase. See Col. 1, lines 6-Col. 2, line 5; Col. 2, line 42-Col. 11, line 67; Col. 17, line 20-line 50; Col. 20, line 5-line 32.

Sine et al. teach skin care compositions in the form of water-in-oil emulsions, wherein the hydrophilic phase comprises 1-98% of the composition and the hydrophobic phase comprises 1-50% of the composition, and preferably 1-10% of the composition. See abstract; Col.9, line 54-Col. 11, line 50; Col. 12, line 25-Col. 14, line 49; Col. 18, line 30-line 54; Col. 19, line 4-Col. 20, line 48; Col. 23, line 64-Col. 27, line 14; Col. 32, line 53-Col. 35, line 15.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the percent weights taught by Sine et al. to the composition of Mellul et al., because of the expectation of providing uniform application of the product to the skin.

The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. Therefore, the claims are properly rejected under 35 U.S.C. § 103.

Prior Art

The prior art made of record and not specifically relied upon in any rejections cited above is either 1) considered cumulative to the prior art that was cited in a rejection or is 2) considered pertinent to the applicant's disclosure and shows the state of the art in its field but is not determined by the Examiner to read upon the invention currently being prosecuted in this application.

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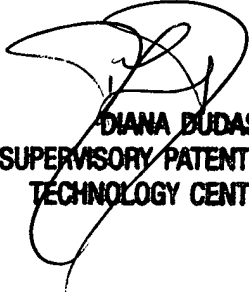
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Lauren Q. Wells
January 16, 2001


DIANA DUDASH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600